

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY
FILED
HABEAS CORPUS OFFICE

United States District Court		District MASSACHUSETTS
Name MICHAEL A SUBENKO	Prisoner No. W65867	Case No. 12:36-CR-98760 U.S. DISTRICT COURT DISTRICT OF MASS.
Place of Confinement	04·10023 GAO	
Name of Petitioner (include name under which convicted) MICHAEL A. SUBENKO	Name of Respondent (authorized person having custody of petitioner) PROCTON DISTRICT ATTORNEY'S OFFICE, BROCKTON SUPERIOR COURT ATTORNEY GENERAL OFFICE	
The Attorney General of the State of: MASSACHUSETTS	THOMAS F. RILEY	
PETITION		
<p>1. Name and location of court which entered the judgment of conviction under attack SUPERIOR COURT, 72 Belmont St BROCKTON, MA, 02301 BROCKTON</p> <p>2. Date of judgment of conviction JANUARY 11, 1999</p> <p>3. Length of sentence 12 - 15 with ten yrs probation, and ten yrs suspended</p> <p>4. Nature of offense involved (all counts) MANSLAUGHTER, MOTOR VEHICLE Homicide, ASSAULT AND BATTERY, ASSAULT AND BATTERY, DW AND RECEIVING stolen PROPERTY</p>		
<p>5. What was your plea? (Check one)</p> <p>(a) Not guilty <input checked="" type="checkbox"/></p> <p>(b) Guilty <input type="checkbox"/></p> <p>(c) Nolo contendere <input type="checkbox"/></p> <p>If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:</p> <hr/> <hr/>		
<p>6. If you pleaded not guilty, what kind of trial did you have? (Check one)</p> <p>(a) Jury <input checked="" type="checkbox"/></p> <p>(b) Judge only <input type="checkbox"/></p> <p style="text-align: right; margin-right: 100px;"><i>5/29/04</i></p>		
<p>7. Did you testify at the trial? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>		
<p>8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>		
AMOUNT \$5 SUMMONS ISSUED N/A LOCAL RULE 4.1 WAIVER FORM NOT ISSUED F.O.M. <i>1/1/04</i>		

9. If you did appeal, answer the following:

(a) Name of court NEW COURT HOUSE
APPEALS COURT 1500 PEMBERTON SQ, BOSTON

(b) Result The judgement on the manslaughter, assault and battery
by means of a dangerous weapon, and receiving a stolen motor vehicle are

(c) Date of result and citation, if known 02/08 (affirmed) The judgement on the Vehicular
Homicide indictment is reversed and the

(d) Grounds raised NOT SURE (Verdict is set aside, and the indictment
is dismissed)

(e) If you sought further review or the decision on appeal by a higher state court, please answer the following:

(1) Name of court SUPREME JUDICIAL COURT 1300 NEW COURT HOUSE PEMBERTON SQ

(2) Result BOSTON MA 02/08
The judgement on the manslaughter, assault and battery by means

of a dangerous weapon and receiving stolen motor vehicle are affirmed
The judgement on the Vehicular Homicide is reversed and the verdict is

(3) Date of result and citation, if known set aside

(4) Grounds raised NOT SURE

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court SUPREME JUDICIAL COURT 1300 PEMBERTON SQ BOSTON MA

(2) Nature of proceeding Whether the court erred in allowing the indictment for vehicular homicide

to be amended to exclude the word Reckless, after the close of evidence and prior to giving
jury instructions. Whether the court erred in instructing the jury whether the court erred

in allowing prior bad acts testimony and whether the court erred in failing
as opposed to dismissing, lesser included vehicular homicide conviction

after a guilty verdict was returned on a manslaughter indictment.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No NOT SURE

(5) Result NOT SURE

(6) Date of result NOT SURE

(b) As to any second petition, application or motion give the same information:

(1) Name of court NOT SURE

(2) Nature of proceeding NOT SURE

(3) Grounds raised NOT SURE

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No NOT SURE

(5) Result NOT SURE

(6) Date of result NOT SURE

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No

(2) Second petition, etc. Yes No

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: CONVICTION OBTAINED BY USE OF EVIDENCE OBTAINED PURSUANT TO AN UNLAWFUL ARREST.

Supporting FACTS (state briefly without citing cases or law): Upon coming out of come in the hospital, I am unaware of ever being arrested, know no one gave me miranda rights. Upon reading years later newspaper clippings apparently I was arrested in a drug induced coma and in a halo in traction. I never signed a power of attorney to sign my rights over to anyone, no law force or agency of officer ever informed or stated I was under arrest.

B. Ground two: CONVICTION OBTAINED BY A VIOLATION OF THE PRIVILEGE AGAINST SELF-INCRIMINATION, CONVICTION OBTAINED BY ACTION OF A GRAND JURY OR PETIT JURY WHICH WAS UNCONSTITUTIONALLY SELECTED AND IMPANELED
 Supporting FACTS (state briefly without citing cases or law): I was never read my miranda rights I was never arrested, remained hospitalized for months. prosecution failed to bring evidence to the grand jury to get an indictment. prosecution did not indict co-defendant, grand jury was impaired due to influence of others, co-defendant's family is a employee of a branch of the united states government, due to this conflict plaintiff was denied his constitution rights of due process. Attorney picked associates of police agency for jury knowing prosecution had influence over them.

C. Ground three: *Denial of effective assistance of counsel*

Supporting FACTS (state briefly without citing cases or law): *Counsel was aware defendant never received memorandum rights, counsel was aware that petition was not stable to stand trial, counsel claimed that competency was not a big thing on the grounds that counsel failed to comply with petitions constitutional right as provided by law*. *Counsel did not comply with his own professional ethics, counsel failed to inform the ~~judge~~ of client's mental state, counsel failed to inform the court of his reservation of his client's ability to stand trial*.

D. Ground four *Denial of right of appeal*

Supporting FACTS (state briefly without citing cases or law): *Due to prosecution's opinion crime was premeditated, appeal was denied on grounds that prosecution knew petition was aware that the victim was going to die in the car accident, prosecution states that petition's actions were premeditated, prosecution claims there was no grounds to charge petition with vehicular homicide, appeal denied for no merit.*

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: *Miranda rights, competency and ineffective counsel was not set forth in appeal, do to all retained and appointed counsel, conflict of interest to cover up prosecutors conspiracy to hide capital crime of victim, prosecution is aware that state troopers committed the capital crime.*

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing *RICHARD BARRETT, JEFFREY DENNER*

*FRANK MONDANO
99 Summer St Boston MA 02210*

(b) At arraignment and plea *As far as I know attorney Richard Barrett was there, I was in a coma and drug induced.*

(c) At trial FRANK MONDANO 99 SUMMER ST BOSTON MA
02210

(d) At sentencing FRANK MONDANO 99 SUMMER ST BOSTON MA,
02210

(e) On appeal JENNIFER PETERSEN 44 SCHOOL ST SUITE 600
BOSTON MA, 02108

(f) In any post-conviction proceeding JENNIFER PETERSEN 44 SCHOOL ST
SUITE 600 BOSTON MA, 02108

(g) On appeal from any adverse ruling in a post-conviction proceeding JENNIFER PETERSEN
44 SCHOOL ST BOSTON MA, 02108

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

December 21, 2003
(date)

Michael S. Tolentino

Signature of Petitioner

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(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

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Instructions—Read Carefully

- (1) This petition must be legibly handwritten or typewritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute form AO 240 or any other form required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your personal account exceeds \$_____, you must pay the filing fee as required by the rules of the district court.
- (5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and at least two copies must be mailed to the Clerk of the United States District Court whose address is:
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.